



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166266

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 25, 2015, at Ashland, Wisconsin. Hearings scheduled for June 18, 2015, July 20, 2015, and August 17, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to a power wheelchair with an electric stander.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Ashland County.
2. On April 16, 2015, the petitioner requested a power wheelchair with accessories, including a power stander. The Office of Inspector General denied the request on April 17, 2015.
3. The petitioner is a 26-year-old woman diagnosed with cerebral palsy and hemiplegia.
4. The Office of Inspector General has determined that the Wisconsin Medicaid program will not pay for standers that are part of a wheelchair because they are not medically necessary

### **DISCUSSION**

The petitioner requested a power wheelchair with accessories, including a power stander, at a cost of \$44,182.20. The Office of Inspector General previously approved a power wheelchair for her, but she never obtained it because the office did not approve a power stander. Wheelchairs and their accessories are types of durable medical equipment that the Office of Inspector General must authorize before Medicaid will pay for them. *See* Wis. Admin. Code § DHS 107.24. The Office of Inspector General denied the petitioner's current request after determining that the power stander is not medically necessary. The petitioner contends that she requires this accessory to carry on her employment.

Medicaid does not cover durable medical equipment unless it is "contained in the Wisconsin durable medical equipment (DME) and medical supplies indices." Wis. Admin. Code, § DHS 107.24(2)(b). The DME not only omits standers, but the department lists "standers with mobility bases" in its Revised List of Noncovered Durable Medical Equipment and Services. *Medicaid and BadgerCare Update*, No. 2004-75 (September 2004). I have no authority to order what the department's rules specifically prohibit. Therefore, I must uphold the agency's denial.

Much of the petitioner's testimony argued that a *manual* stander would not meet her needs and is unavailable even if it did. This came up because the Office of Inspector General's representative raised the cost effectiveness of a manual as a opposed to an electric stander as an alternative reason for denying the claim. But there is no need to consider this argument because even if an electric stander is cost effective and medically helpful, Wis. Admin. Code, § DHS 107.24(2)(b) specifically bars medical assistance reimbursement for it. In fact, the regulation bars all standers—manual or electric—attached to a wheelchair, so a manual stander could not be an alternative regardless of its cost or effectiveness when compared with an electric stander. If the petitioner continues to desire an electric stander, she must find alternative funding for it.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the requested power wheelchair and stander because they are not medically necessary. The stander is not medically necessary because it is not listed in the DME and is listed in the department's Revised List of Noncovered Durable Medical Equipment and Services

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 30th day of October, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 30, 2015.

Division of Health Care Access and Accountability